



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Mr. Charles W. Schiesser
General Counsel
Legal Services
Texas Rehabilitation Commission
4900 North Lamar
Austin, Texas 78751-2399

OR95-733

Dear Mr. Schiesser:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33748.

The Texas Rehabilitation Commission (the "commission") received an open records request asking for a copy of the transcript of the requestor's grievance hearing and a copy of all documents related to the investigation of the San Antonio Human Resources Office of the commission. You state that the commission has released to the requestor a copy of the transcript of her grievance hearing. You contend that the investigation documents the requestor seeks are excepted from required public disclosure by section 552.103(a) because the documents are related to the pending litigation between the commission and the requestor. You have submitted a copy of the responsive documents that you contend may be withheld as well as a copy of the petition the requestor filed in the federal lawsuit styled *Charlia Lewis v. Texas Rehabilitation Commission, Jimmy Jackson, Kenneth Vogel, Dave Ward, and Tom Ross*, Civil Action No. A-94-CA-12-SS.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and


(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kathryn P. Baffes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/RHS/rho

Ref: ID# 33748

Enclosures: Submitted documents

cc: Ms. Charlia Lewis
c/o Mr. Tommy Tucker
Franklin Building
111 Congress
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(w/o enclosures)